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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants: Roger R. Lesieur

Docket No.: C-2354

Serial No.: 09/332,415

Group: 1764

Filed: June 14, 1999

Examiner: B. Ridley

For: "Compact Light Weight Methanol Autothermal Reformer Assembly"

REPLY BRIEF UNDER RULE 193 (b) (1)

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

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Dear Sir:

This is a reply brief which is responsive to certain points raised in the Examiner's Answer dated June 6, 2001 relating to the above-identified application.

In the first paragraph on page 16 of the Answer, the Examiner notes that appellant has not set forth any arguments regarding the provisional obviousness-type double patenting rejection of Claims 1, 2, 7, 9 12-20, 22 and 23. We submit that such arguments are not needed since it is impossible to have a provisional final obviousness-type double patenting rejection which relies on a co-pending patent application which has not yet issued, as is the case. Thus, the fact that the appellant has not responded to such a rejection in the appeal brief is irrelevant to the issues to be decided in this appeal.

In the second paragraph on page 16 of the Answer, the Examiner advises the Appellant to direct comments to the merits of the rejections and objections, and she states that her educational and/work background is not an issue in this appeal. We note that the Examiner explicitly stated that she could be considered to be one of skill in the art on page 15 of the final rejection. Thus the Examiner made the questions of her educational level and her work experience an issue in this appeal which Appellant

was required to either respond to or admit. In the Answer she has not recanted her allegation that she can be considered to be one of skill in the art of hydrocarbon fuel reforming, thus this allegation remains an issue in this appeal.

On pages 19-21, the Examiner, in arguing the question of motivation to combine the disparate teachings of the references she has cited, has stressed that motivation to combine can come from either the references themselves, or in the knowledge generally available to one of ordinary skill in the art. (emphasis in Answer). Thus the Examiner seems to be relying more on "the knowledge generally available to one of ordinary skill in the art" in finding motivation to combine in her §103 rejections, than on the references themselves. It is noted that the Examiner has not defined "one of ordinary skill in the art" of methanol and/or ethanol fuel gas reforming, except to allege that she is such a person without any proof of this allegation; and she has not identified what "the knowledge generally available" to such a person is. Thus the Examiner has not supplied any evidence as to who one skilled in this art is, and what knowledge is generally available to such an individual. In Ex parte Levy, 17 USPQ2d 1461 (US PTO Bd. Pat. App. & Int. 1990), the Board held that the initial burden of establishing a *prima facie* basis to deny patentability rests upon the examiner. See also In re Carleton, 202 USPQ 165 (CCPA 1979); and In re Piasecki, 223 USPQ 785 (Fed. Cir. 1984). This burden can only be discharged by establishing a factual basis for the finding of non-patentability. Examiner's conjecture or conclusionary assertions do not provide the necessary factual basis. In this case, the Examiner has not established a factual basis which defines one of ordinary skill in the art of hydrocarbon fuel reforming, and has not established a factual basis which defines what knowledge is generally available to such a person. The Examiner has thus failed to discharge her burden of proof on this point, which she seems to rely heavily on in the rejections and in the Answer.

On page 24, the Examiner alleges that a methanol and/or ethanol fuel gas reformer environment is "less stringent" than a catalytic converter, without a scintilla of evidence to back up this allegation. The fact of the matter is that Sheller definitely teaches away from the use of a foam catalyst bed which will be electrically heated to operating

temperatures.

On page 18 of the Answer, the Examiner alleges that the Setzer et al '484 reformer, which operates at a temperature of about 1,350°F, or so (a fact which is undisputed by the Examiner) could possibly combust a portion of a fuel gas at a temperature of about 200°F. This speculation by the Examiner as to what temperatures the Setzer et al '484 reformer "could possibly" ("is operable to") combust a fuel gas are nothing more than speculation and conjecture, and does not discharge the Examiner's burden of proof on this point, as noted above.

Respectfully submitted,



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Dear Sir:

Enclosed are three copies of an Appeal Brief for use in connection with the captioned patent application. Please charge the applicable fee of \$310.00 due in connection with this matter to Special Account No. 50-1307. Order No. C-2354. A duplicate copy of this letter is enclosed.

Respectfully submitted,

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